

FCC MAIL SECTION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-919  
03982

In re Applications of	)	MM DOCKET NO. 92-116 ✓
	)	
UHURU COMMUNICATIONS, INC.	)	File No. BRED-910130WF
	)	
For Renewal of License	)	
of Station WUCI-FM	)	
Binghamton, New York	)	
	)	
and	)	
	)	
WSKG PUBLIC	)	File No. BPED-910501MB
TELECOMMUNICATIONS COUNCIL	)	
	)	
For a Construction Permit	)	
for a New FM Station	)	
Binghamton, New York	)	
	)	
ARROWHEAD CHRISTIAN CENTER	)	File No. BPED-910501MC
	)	
For a Construction Permit	)	
for a New FM Station	)	
Binghamton, New York	)	

MEMORANDUM OPINION AND ORDER

Issued: August 25, 1992 ; Released: August 27, 1992

1. Under consideration are a Motion to Dismiss, filed on July 27, 1992, by Arrowhead Christian Center ("Arrowhead") and WSKG Public Telecommunications Council ("WSKG"); a supplement thereto, filed on August 4, 1992, by Arrowhead and WSKG; and comments, filed on August 19, 1992, by the Mass Media Bureau ("Bureau").

2. Arrowhead and WSKG seek the dismissal of the application of Uhuru Communications, Inc. ("Uhuru"). In support, petitioners rely on the following: (a) Uhuru's failure to file the environmental statement required by the Hearing Designation Order, 7 FCC Rcd 3507 (1992) ("HDO");<sup>1</sup> (b) Uhuru's failure to attend a meeting of the parties to discuss settlement, share-time arrangements, discovery, and the scope of the issues, as required by Order Prior to Prehearing Conference, FCC 92M-754, released July 6, 1992; (c) Uhuru's failure to attend a second meeting of the parties to discuss those matters; and (d) Uhuru's failure to respond to a Motion to Enlarge Issues filed by WSKG on July 13, 1992.<sup>2</sup> Uhuru has not responded to either the Motion

<sup>1</sup> Such statement was due to be filed not later than July 8, 1992. HDO, at paras. 4 and 9.

<sup>2</sup> Responses to the Motion to Enlarge Issues were due to be filed not later than July 28, 1992.

to Dismiss or the supplement.<sup>3</sup> In light of Uhuru's lack of a response, the Bureau supports dismissal. The Bureau also points out that Uhuru failed to attend the August 7, 1992, prehearing conference in this proceeding.

3. The Motion to Dismiss will be granted and Uhuru's application will be dismissed. To date, Uhuru has failed to prosecute its application in any substantive manner and, by virtue of its lack of response to the instant motion and supplement, has offered absolutely no justification for this failure.<sup>4</sup> Moreover, Uhuru's conduct has prejudiced the other parties to this proceeding and has placed a burden on the administrative system. As correctly noted by Arrowhead and WSKG, no agreement was reached on the scope of the issues, discovery, share-time arrangements or possible settlement as a consequence of Uhuru's non-participation. Indeed, it was not even possible to address these matters in any meaningful way at the prehearing conference because Uhuru was not present. Under all of these circumstances, and in order to deter other similarly situated applicants from emulating Uhuru's conduct, dismissal is both warranted and appropriate. Comuni-Centre Broadcasting, Inc. v. FCC, 856 F.2d 1551 (D.C. Cir. 1988).<sup>5</sup>

Accordingly, IT IS ORDERED that the Motion to Dismiss filed by Arrowhead and WSKG on July 27, 1992, IS GRANTED and the above-captioned application of Uhuru Communications, Inc., IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that, in light of the dismissal of the Uhuru application, the following ARE DISMISSED as moot: (a) Motion to Enlarge Issues, filed on July 13, 1992, by WSKG; (b) Mass Media Bureau's Opposition to Motion to Enlarge Issues, filed on July 28, 1992, by the Bureau; (c) Reply, filed on August 3, 1992, by WSKG; (d) Notice of Depositions [relating to Uhuru], filed on August 21, 1992, by WSKG; and (e) a letter request for production of documents addressed to Uhuru, from WSKG, dated August 24, 1992.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge

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3 Any such response was due to be filed not later than August 19, 1992.

4 Uhuru's lack of participation in this case is perhaps understandable in light of the fact that WUCI-FM has been off the air without authorization for more than a year and Uhuru apparently lacks the equipment to resume operation of the station. See HDO, at para. 2.

5 Uhuru's election to go forward without the assistance of counsel does not dictate a contrary result. The Commission has consistently held that where an applicant chooses to act without counsel, it has the burden of becoming familiar with and conforming to the Commission's rules and procedures. See Lt/Colonel Cyrus V. Edwards, FCC 92R-59, released July 22, 1992, at para. 5, and cases cited therein.